

**LOCAL AGENCY - STATE AGREEMENT
BICYCLE TRANSPORTATION ACCOUNT PROJECT**

04 City of Sunnyvale AGREEMENT NO. BTA 04/05-04-SCL-10
District Local Agency

THIS AGREEMENT, made in duplicate entered into effective as of this 1st day of July 2004, is by and between the political entity identified above, a political subdivision of the State of California, hereinafter referred to as "LOCAL AGENCY", and the State of California, acting by and through the California Department of Transportation, hereinafter referred to as "STATE".

WITNESSETH:

WHEREAS, under the provisions of Streets and Highways Code Section 2106 (b) and Sections 890 through 894.2, as implemented by regulations in Title 21, Chapter 2, Subchapter 10 of the California Administrative Code, funds have been allocated to LOCAL AGENCY for the construction of a Bicycle Transportation Account project selected by LOCAL AGENCY and described in EXHIBIT A attached hereto; and

WHEREAS, under provisions of the California Administrative Code, STATE is required to enter into an agreement with LOCAL AGENCY relative to design standards, the handling and accounting of funds, time for completion, and all other phases of the project,

THEREFORE, the parties agree as follows:

ARTICLE I - Project Administration

1. The project or projects described in Exhibit A, hereinafter referred to as "the project", shall be constructed as provided in this agreement and in accordance with the laws applicable to LOCAL AGENCY. In the event of a conflict, the terms of this agreement shall prevail.
2. Construction may be performed by contract or LOCAL AGENCY. LOCAL AGENCY shall prepare all documents necessary for advertising, advertise, award and administer the contract including inspection of work performed and payments to the contractor as the same becomes due.
3. Prior to advertising, LOCAL AGENCY shall prepare a complete set of contract plans. Such plans shall conform to uniform specifications and to design and safety standards as described in the Caltrans Highway Design Manual - Bikeway Planning and Design - Chapter 1000.
4. The estimated costs of the project are as shown in Exhibit A. LOCAL AGENCY may, at its option, award contracts for amounts in excess of said estimates, and final project expenditures may exceed said estimates if sufficient local funds are available to finance the excess. It is understood, however, that the allocation of Bicycle Transportation Account funds will not exceed that shown for each item in Exhibit A.
5. In the event the final costs of the project are less than said estimate by reason of low bid or otherwise, the allocation of Bicycle Transportation Account funds will be decreased in relationship to the percent funded by Bicycle Transportation Account.

6. Local Agency shall submit an acceptable final accounting of actual project costs and a written request for payment by April 1, 2007. State shall pay to the local agency the Bicycle Transportation Account share of the actual cost of the project prior to June 30, 2007, the expiration date of the Bicycle Transportation Account funds included in this project.
7. All costs charged to this agreement by LOCAL AGENCY shall be supported by properly executed payrolls, time records, invoices and vouchers, evidenced in proper detail the nature and propriety of the charges, and shall be costs allowable under the California Bicycle Transportation Act.
8. STATE may, at its option, declare this agreement void if a contract for construction of the project has not been awarded by LOCAL AGENCY on or before the end of the fiscal year following the fiscal year in which funds for the project are allocated.
9. If the project is a cooperative project and includes work on a State highway, it shall be the subject of a separate cooperative agreement between the STATE and LOCAL AGENCY.
10. The Legislature of the State of California, and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain employment practices with respect to contract and other work financed with State funds. LOCAL AGENCY shall ensure that work performed under this agreement conforms with the rules and regulations embodying such requirements where they are applicable. Any agreement or service contract entered into by LOCAL AGENCY for performance of work connected with the project shall incorporate Exhibit B attached hereto.

ARTICLE II - Rights-of-Way

1. Such rights-of-way as are necessary for the construction of the project shall be furnished by LOCAL AGENCY. Right-of-way costs may be included as an eligible item of total costs.
2. LOCAL AGENCY agrees to hold STATE harmless from any liability which may result in the event the right-of-way is not clear prior to award of contract. The furnishing of rights-of-way as provided for herein includes in addition to all real property required for the improvement, free and clear of obstruction and encumbrances, the payment of damages to real property not actually taken but injuriously affected by the proposed improvement. LOCAL AGENCY shall pay from its own funds any costs which arise out of delays to the contractor because utility facilities have not been removed or relocated, or because rights-of-way have not been made available to the contractor for the orderly prosecution of the work.
3. Should LOCAL AGENCY, in acquiring right-of-way for the project, displace an individual, family, business, farm operation, or nonprofit organization, relocation payments and services will be provided in compliance with the applicable State laws. The public will be adequately informed of the relocation payments and services which will be available and, to the greatest extent practicable no person lawfully occupying real property shall be required to move from his dwelling or to move his business or farm operation without at least 90 days written notice from LOCAL AGENCY.

ARTICLE III - Engineering

1. "Preliminary engineering" as used herein includes all preliminary work related to the project, including, but not restricted to preliminary surveys and reports, laboratory work, soil investigations, preparation of plans, designs, and advertising. "Construction engineering" as used herein includes actual inspection and supervision of construction work, construction staking, laboratory and field testing, field reports and records, estimates, final reports, and allowable expenses of employees engaged in such activities.
2. Preliminary and construction engineering costs included in the estimate contained in Exhibit A are eligible project costs. STATE reimbursement to LOCAL AGENCY will be on the basis of the actual cost thereof to LOCAL AGENCY including compensation and expense of personnel working on the project, required materials, and automotive expense provided, however, that LOCAL AGENCY shall contribute its general administrative and overhead expense.

ARTICLE IV - Miscellaneous Provisions

1. If STATE is named as a defendant in any suit arising from the construction, maintenance or operation of the project, LOCAL AGENCY will, at request of STATE, assume full responsibility for the conduct of the defense or will provide such assistance as STATE will require, and will pay any judgments issued against STATE and all costs in connection with the defense. STATE reserves the right to represent itself in any litigation in which STATE's interests are at stake.
2. LOCAL AGENCY shall maintain an accurate and detailed record of costs for this project. Such records shall be retained and made available to STATE's auditors for examination for a minimum period of three years from date of final payment of expenditures from Bicycle Transportation Account.
3. Upon acceptance of the completed project by the awarding authority, or upon the contractor's being relieved of the duty of maintaining and protecting certain portions of the work, LOCAL AGENCY shall assume responsibility for maintaining the project.
4. Minor changes may be made in the project as described in Exhibit A upon notice to STATE. No major change, however, may be made in said project except pursuant to an amendment to this agreement duly executed by STATE and LOCAL AGENCY.
5. LOCAL AGENCY shall certify CEQA compliance or documentation of Categorical Exemption determination as defined in Title 14 of the State Administrative Code-Department of Resources guidelines.
6. Nothing in the provisions of this agreement is intended to create duties or obligations to or rights in third parties not parties to this agreement or affect the legal liability of either party to this agreement by imposing any standard of care different than the standard of care imposed by law.
7. It is understood and agreed that neither the STATE nor any of its officers or employees is responsible for any damage or liability occurring by reason of anything done or omitted to be done in connection with the project. It is understood and agreed that pursuant to Government Code section 895.4 LOCAL AGENCY shall defend, indemnify and save harmless the STATE, all officers and employees from all claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person including but

not limited to workmen and the public, or damage to property arising out of or in any way connected to the project or the completed facility.

8. With respect to third party claims against LOCAL AGENCY arising out of or in any way connected to the project or the completed facility, LOCAL AGENCY waives any and all rights to any type of express, implied or comparative indemnity against the STATE, its officers or employees.

IN WITNESS WHEREOF, the parties have executed this agreement by their duly authorized officers.

STATE OF CALIFORNIA
Department of Transportation

LOCAL AGENCY
City of Sunnyvale

KEN McGUIRE, Chief
Bicycle Facilities Unit
Division of Local Assistance

Date

Name

Date

Title

EXHIBIT A
PROJECT DESCRIPTION AND COSTS

Local Agency: City of Sunnyvale

Agreement No.: BTA 04/05-04+SCL-10

ARTICLE V - Project Location and Description of Work

Location: City of Sunnyvale

Description of Work:

Construct Class II Bikeway on Evelyn Avenue from Sunnyvale Avenue to Reed Avenue.

Net Length: 3.1 miles

ARTICLE VI - Project Funding

Funding	Engineering/Design	Right of Way	Construction	Total	Percent
BTA Funds	\$45,000	\$0	\$278,100	\$323,100	90.00%
Local Funds	\$5,000	\$0	\$30,900	\$35,900	10.00%
Other	\$0	\$0	\$0	\$0	
Total	\$50,000	\$0	\$309,000	\$359,000	100.00%

EXHIBIT B

FAIR EMPLOYMENT AND HOUSING ACT ADDENDUM

1. In the performance of the contract, the Contractor will not discriminate against any employee or applicant for employment because of race, sex, color, religion, ancestry, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, sex, color, religion, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State or local agency setting forth the provisions of this Fair Employment and Housing section.

2. The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment and Housing section of this contract.

3. Remedies for Willful Violations:

(a) The State or local agency will determine a willful violation of the Fair Employment and Housing provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which Contractor was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the Fair Employment and Housing Act and has issued an order or obtained an injunction under Government Code Sections 12900, et seq.

(b) For willful violation of this Fair Employment and Housing provision, the State or local agency shall have the right to terminate this contract either in whole or in part, and any loss or damage sustained by the State or local agency in securing the goods or services hereunder shall be borne and paid for the Contractor and by his surety under the performance bond, if any, and the State or local agency may deduct from any moneys due or that thereafter may become due to the Contractor, the difference between the price named in the contract and the actual cost thereof to the State or local agency.

-----End Exhibit B-----

I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.								
Accounting Officer: <u><i>Arthur J. Long</i></u>					Date: <u>11/17/04</u>		\$ <u>323,100</u>	
Chapter	Statutes	Item	Fiscal Year	Program	BC	Category	Fund Source	BTA Funds
208	2004	2660-101-0045	04/05	20300060	C	220000	T	\$ 323,100